Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
LCI Petition for Declaratory	)	CC Docket No. 98-5
Ruling Concerning Bell Operating	)	
Company Entry into In-Region	)	
Long Distance Markets	)	

REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation ("MCI"), hereby submits reply comments in response to filings made by parties addressing LCI International Telecom Corp.'s ("LCI") Petition for Declaratory Ruling Concerning Bell Operating Company Entry into In-Region Long Distance Markets ("LCI Petition").[1]

For the most part, commenters commend LCI for their attempt to develop an alternative solution to the current stalemate for the achievement of local competition. While some parties, such as MCI, have indicated that a structural approach would need to go further than that proposed by LCI, the general view is that current methods used to spur local competition are simply not working. MCI believes that the Commission should therefore consider alternatives to promote competition.

Not surprisingly, the incumbent monopolists uniformly oppose LCI's proposal nor are they supportive of any suggested structural means to advance local competition. The BOCs would, of course, prefer to maintain control of the local exchange market and to hold consumers hostage by a lack of competitive alternatives. It is well documented that the incumbents

[1] Public Notice DA 98-130 (released Jan. 26, 1998).

steadfastly refuse to cease their monopolistic practices and continue to erect barriers to competitive entry in the local market. Thus, efforts made by new entrants to gain entry have met with little success due, in many instances, to the discriminatory tactics of the incumbents. Section 271 has provided insufficient incentive for the BOCs to open their markets to competition. In an effort to realize the goals of the Act, LCI contends that consideration of a structural alternative may be the only way to affirmatively ensure achievement of a fully competitive local marketplace.

I. MCI CONTINUES TO SUPPORT A DIVESTITURE APPROACH THAT REMOVES BOC INCENTIVES TO DISCRIMINATE

In our comments, MCI indicated that it is time to seriously consider full loop divestiture of the BOCs' monopoly operations.[2] While we applauded LCI for initiating the debate and pursuing an alternative approach to advancing local competition, we continue to view full divestiture as the most effective means to help eliminate BOC incentives to discriminate and thus, discourage local competition.

Several parties agreed that LCI's proposal may not go far enough in addressing potential BOC discriminatory behavior and advocated the need to separate BOC ownership of the network from operations.[3] LCI also concedes that full loop divestiture may be appropriate if LCI's more

---

[2]Comments of MCI Telecommunications Corporation, CC Docket No. 98-5 at 16, March 23, 1998.

[3]See Comments of WorldCom, CC Docket No. 98-5 at 1, March 23, 1998; Comments of Fibernet, CC Docket No. 98-5 at 4, March 23, 1998; Comments of RCN/ClearTel, CC Docket No. 98-5 at 7, March 23, 1998; Comments of the Competition Policy Institute (CPI), CC Docket No. 98-5 at 8, March 23, 1998; and Comments of KMC Telecommunications, CC Docket No. 98-5 at 12, March 23, 1998..

limited approach is not successful in advancing local competition.[4] As MCI has suggested in its Comments, the BOCs' bottleneck facilities should be contained in a separate entity, totally independent and unaffiliated from the BOC or its holding company. In that way, the remaining component of the BOC would maintain control over portions of the local network that would presumabley be subject to competition.

By requiring the BOCs to divest their core monopoly component -- the loop -- the likelihood that competition in local service could be achieved is greatly improved. MCI re-emphasizes, however, that there would still need to be monitoring and regulatory oversight with respect to the provision of the loop until such time that vigorous competition exists. Because we believe it would be far more effective at eradicating BOC discriminatory behavior, MCI continues to believe that full loop divestiture will be a better more effective structural solution.

II. LOCAL COMPETITION HAS YET TO BE ACHIEVED GIVEN BOC EFFORTS TO STYMIE FULL AND FAIR IMPLEMENTATION OF THE ACT

In their comments, many of the BOCs claim that local competition already exists.[5] In reality, two years after its enactment, the BOCs continue to maintain approximately 99 percent of the local market.[6] Moreover, based on recent history, it is apparent that local competition to any significant degree is not likely to occur in the foreseeable future.

---

[4]See Comments of LCI, CC Docket No. 98-5 at 2, March 23, 1998.

[5]Comments of Ameritech Corporation, CC Docket No. 98-5 at 5, March 23, 1998; Comments of BellSouth, CC Docket No. 98-5 at 11, March 23, 1998; Comments of Bell Atlantic, CC Docket No. 98-5 at 3, March 23, 1998; Comments of SBC Communications, CC Docket No. 98-5 at 7, March 23, 1998.

[6]Industry Analysis Division, Telecommunications Industry Revenue: TRS Worksheet Data (Common Carrier Bureau, December 1996).

The Commission is in a position to examine the status of local competition. Indeed, the Commission has determined that the BOCs still maintain their dominant status, despite efforts by the CLECs to enter the local market.[7] Moreover, the BOCs first quarter earnings show an unprecedented increase in earnings.[8] In its Computer III remand proceeding, the Commission found that "the BOCs remain the dominant provider of local and exchange access services in their in-region states." This is further highlighted by the Consumer Federation of America's (CFA) recent report, "Stonewalling Local Competition: The Baby Bell Strategy to Subvert the Telecommunications Act of 1996."[9] In its report, CFA notes that incumbents currently have a 99 percent market share in the local market. The absence of competition has not gone unnoticed by expert industry observers. Earlier this year, the Yankee Group issued a report which concluded that most small and medium businesses, as well as most consumers have seen "barely a trace of local competition."[10]

For these reasons, the Commission should consider an alternative method to encouraging the BOCs to open their markets. Currently, the BOCs are attempting to litigate their way out of key procompetitive provisions of the Act. To that end, the BOCs have delayed local market

---

[7] Further Notice of Proposed Rulemaking, In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20, and 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements, CC Docket No. 98-10, at 33 (rel. January 30, 1998).

[8] See Letter from Mary L. Brown, Senior Policy Counsel, Federal Law and Policy, MCI to Richard Metzger, Chief, Common Carrier Bureau, FCC, dated April 14, 1998.

[9] "Stonewalling Local Competition: The Baby Bell Strategy to Subvert the Telecommunications Act of 1996," at 2 Consumer Federation of America, January, 1998.

[10] The Yankee Group Research Notes, February 10, 1998.

entry by challenging the Commission's rules requiring cost-based pricing for unbundled network elements, combinations of elements, prohibitions on disassembling elements that are already combined in the BOCs' networks. Moreover, they have seen fit to challenge not only the Commission's section 271 decisions[11] but the constitutionality of section 271 as well.[12] The BOCs' intransigence is not limited to the litigation arena. During the negotiation and arbitration process for interconnection agreements, CLECS experienced tremendous difficulties securing provisions for reasonable rates, terms and conditions as well as mechanisms for enforcement of those conditions.

Furthermore, as LCI described in its Petition, the BOCs have refused to provide combinations of unbundled network elements despite, in some cases, the fact that they previously agreed to do so. Although Ameritech and US West claim that the Eighth Circuit held that the Act does not require the BOCs to combine unbundled elements for CLECs, the Eighth Circuit only stated that they cannot be required to do so under the Act.[13] There is nothing in the court's decision that bans combination requirements pursuant to state law. Despite the fact that Ameritech has been ordered by several state commissions in its region to provide shared transport as a combined element,[14] Ameritech steadfastly refuses to do so. It is this type of

---

[11] FCC v. Iowa Utilities Board, Nos. 97-826 *et al.*, ptn for cert. pending.

[12] BellSouth Corp. v. FCC, No. 98-1019, SBC Communications v. FCC, No. 97-1425 (D.C. Cir. March 20, 1998).

[13] MCI and other competitive carriers are in stark disagreement with the Eighth Circuit and appealed to the Supreme Court on this issue. FCC v. Iowa Board Utilities Board, Nos. 97-826 *et al.*, ptn for cert. granted, (Jan. 23, 1998).

[14] On the Commission's Own Motion to consider the total service long run incremental costs and to determine the prices of unbundled network elements, interconnection services resold

anticompetitive behavior that is preventing CLECs from entering the local market via the use of unbundled elements. Moreover, the Eighth Circuit only held that the ILECs could not be required to combine elements under the Act. The court did not prevent states from requiring ILECs to combine elements under state law.[15]

In addition, carriers such as SBC Communications and Bell Atlantic, that voluntarily agreed to combine elements for CLECs, reneged on those commitments and unilaterally informed competitors that they would not honor the negotiated interconnection agreement requiring combinations. Absence of voluntary compliance with these agreements by the BOCs means the Commission must take additional and more strident measures to ensure that local competition happens.

III. A STRUCTURAL APPROACH TO END THE STALEMATE IN ADVANCING LOCAL COMPETITION DOES NOT VIOLATE THE ACT

Contrary to the BOCs' arguments,[16] a structural approach would not violate section 271

---

services, and basic local exchange services for AMERITECH MICHIGAN, Michigan PSC Case No. U-11280 (January 28, 1998) (Michigan PSC Decision) ; see also Review of Ameritech Ohio's Economic Costs for Interconnection, Unbundled Network Elements, and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic, Ohio PUC Case No. 96-922-TP-UNC (rel. Nov. 6, 1997) (requiring Ameritech to provide combine network elements to competitors); Illinois Commerce Commission on Its Own Motion Investigation into forward looking cost studies and rates of AMERITECH ILLINOIS for interconnection, network elements, transport and termination of traffic, Illinois Bell Telephone Company Proposed Rates, Terms and Conditions for Unbundled Network Elements, 96-0486 Consolidated 96-059, ILLINOIS COMMERCE COMMISSION, 1998 Ill. PUC LEXIS 109, at pp. 266-273, February 17, 1998.

[15] Michigan PSC Decision at 22 (concluding that the Eighth Circuit decision did not preempt state telecommunications law requirements).

[16]Comments of Ameritech Corporation, CC Docket No. 98-5 at 7, March 23, 1998; Comments of BellSouth, CC Docket No. 98-5 at 2, March 23, 1998; Comments of Bell Atlantic,

or any other provision of the Act. The BOCs' argument that section 271 of the Act bars the Commission from limiting or extending the terms of the checklist is misguided.

It is MCI's view that section 271(d)(4) does not constrain the Commission's exercise of its general discretion to assess and promote the public interest. On the contrary, this language merely serves to narrow the Commission's ability to "limit or extend the terms used in the competitive checklist." The proper interpretation here is simply that the Commission cannot modify existing checklist items. However, the LCI proposal purposefully does not seek any change to the checklist. Instead, the proposal allows the BOCs to voluntarily undertake a structural approach to advance local competition. At no point does LCI suggest any modification of the competitive checklist. Section 271 and the fourteen items contained in the checklist must still be met.

Even if section 271(d)(4) were read more broadly, the Commission would still have the ability to evaluate local competition, and specifically, the marketplace consequences of the full implementation of the checklist through a public interest test -- which is permissible under the Act. If subsection (d)(4) were construed expansively, it would not have any effect on the Commission's authority to require a structural approach, such as the one proposed by LCI, under the public interest test. The public interest test is an independent requirement, separate from, and in addition to, the competitive checklist.[17]

CC Docket No. 98-5 at 5, March 23, 1998; Comments of SBC Communications, CC Docket No. 98-5 at 24, March 23, 1998.

[17]For a more detailed discussion of the public interest test, see Comments of MCI, Docket No. 97-208, p. 77, (October 20, 1997).

Finally, the BOCs argue that section 251 is predicated on the notion that they will provide wholesale and retail functions on an integrated basis.[18] What the BOCs fail to recognize is that the proposal offered by LCI is purely voluntary. There is no requirement or mandate for structural separation as outlined by LCI, but rather the suggestion is offered as an alternative to expedite growth of local competition and RBOC entry into the in-region long distance market. In any event, nothing in section 251 precludes the Commission from mandating divestiture based on a finding that this structural remedy is necessary to achieve compliance with the substantive requirements of sections 251 and 252.

IV. CONSUMERS WILL REALIZE SIGNIFICANT BENEFITS FROM A COMPETITIVE MARKETPLACE AS A RESULT OF DIVESTITURE

The BOCs erroneously contend that local competition is already thriving, and thus make the case for immediate entry into the in-region long distance market. At the same time, they contend that consumers do not want to change carriers. In short, they perceive consumer choice as a bad thing.[19]

With new companies cropping up and other companies merging, the BOCs contend that there is a trend towards industry consolidation from which they are being excluded.[20] To the contrary, there has been a good deal of merger activity among the BOCs themselves. The BOCs

---

[18]See Comments of Ameritech Corporation, CC Docket No. 98-5 at 8, March 23, 1998.

[19]Comments of SBC Communications, CC Docket No. 98-5 at 8, March 23, 1998; Comments of Ameritech Corporation, CC Docket No. 98-5 at 12-14, March 23, 1998.

[20]Comments of US West, CC Docket No. 98-5 at 25, March 23, 1998; Comments of BellSouth, CC Docket No. 98-5 at 8, March 23, 1998; Comments of SBC Communications, CC Docket No. 98-5 at 10, March 23, 1998.

making this claim have chosen to ignore the further consolidation of monopoly markets as evidenced by the BA/NYNEX, SBC/PacTel, and the proposed SBC/SNET mergers.

While there has been merger activity to date in the telecommunications industry, mergers, as an economic tool increase efficiency by bringing economies of scope and scale to a specific industry sector.[21] The benefits of these efficiencies flow to all consumers and are not segmented by services offered. The marketplace in total will realize these efficiencies. However, for mergers to bring true efficiencies to the market, there needs to be some level of competition already in place. Mergers, for example, of non-dominant players in an industry will bring efficiencies to the market without sacrificing consumer choice. Consolidation of the BOCs is a clear example where merger activity would be detrimental to the local exchange market.

Finally, the BOCs claim that under any restructuring proposal, such as the one presented by LCI, they will encounter undue costs to comply with this approach.[22] The costs of divestiture would be minimal. As required by 251, the ILECs are required to give unaffiliated retailers the same ability to market ILECs services that integrated affiliates have and to achieve the same economies. Thus, new systems would have to be created and the systems that work for unaffiliated resellers should work for the spun-off entity. If costs are truly significant, the ILECs have failed to adequately implement the requirements under section 251. Moreover, the benefits gained would far outweigh the costs. The divestiture of AT&T clearly proved that there are tremendous benefits, which are long lasting and dynamic, and that outweigh the one-time costs

---

[21]Jeffrey M. Perloff and Klaas T. van 't Veld, Modern Industrial Organization, Harper Collins College Publishers, 1996.

[22]Comments of US West, CC Docket No. 98-5 at 19, March 23, 1998.

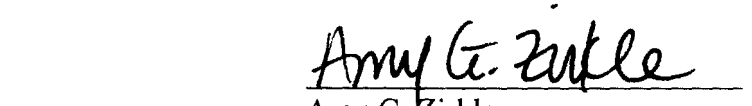
incurred.

CONCLUSION

In light of the Act's failure to expedite local competition, the Commission should seriously consider an alternative approach to its advancement. While the LCI proposal represents a good first step, MCI continues to believe that full loop divestiture will better serve to eliminate BOC incentives to discriminate and will help create a competitive local marketplace. The BOCs seek to dismiss the LCI proposal, or any structural alternative, based on misguided interpretations of the limitations or restrictions of Commission authority. Moreover, the BOCs predicate most of their arguments against LCI's proposal on the false view that local competition already exists. Starting from such a premise, they can only reach the wrong conclusion. As discussed herein, the Commission does have the authority to consider such alternative remedies as structural separation to advance the goals of the Act and serve the public interest.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION



Amy G. Zirkle
Kecia Boney
Lisa B. Smith
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006
(202) 887-3037

Dated: April 22, 1998

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on April 22, 1998.

Amy G. Zirkle

Amy G. Zirkle
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 887-3037

CERTIFICATE OF SERVICE

I, Lonzena Rogers, hereby certify that on this 22nd day of April, 1998, I served by first-class United States Postal Service, postage prepaid, a true copy of the foregoing Reply Comments, upon the following.

A. Richard Metzger*
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 500
Washington, DC 20554

Carol Mattey*
Acting Chief
Policy & Program Planning Division
Federal Communications Commission
1919 M Street, NW
Room 544
Washington, DC 20554

Richard Welch*
Chief
Policy &Program Planning Division
Federal Communications Commission
1919 M Street, NW
Room 544
Washington, DC 20544

ITS
1231 20th Street, NW
Washington, DC 20005

Anne R. Bingaman
Douglas W. Kinkoph
LCI International Telecom Corporation
8180 Greensboro Drive
Suite 800
McLean, VA 22102

Peter A. Rohrbacer
Linda L. Oliver
Counsel for LCI International Telecom Corporation
Hogan & Hartson LLP
Columbia Square
555 13th Street, NW
Washington, DC 20004-1109

Mark C. Rosenblum
Leonard J. Cali
Richard H. Rubin
AT&T
295 North Maple Avenue
Room 325213
Basking Ridge, NJ 07920

Ronald Binz
Debra Berlyn
John Windhausen, Jr.
Competition Policy Institute
1156 15th Street, NW
Suite 310
Washington, DC 20005

James M. Smith
Excel Telecommunications, Inc.
3000 K Street, NW
Suite 3i00
Washington, DC 20007

Robert J. Aamoth
Steven A. Augustino
Counsel for Excel Telecommunications, Inc.
Kelley Drye & Warren LLP
1200 Nineteenth Street, NW
Suite 500
Washington, DC 20036

Dana Frix
Jonathan D. Draluck
Counsel for Fibernet Telecom, Inc.
Swidler & Berlin Chartered
3000 K Street, NW
Suite 300
Washington, DC 20007

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
SBC Communications, Inc.
One Bell Plaza
Room 3008
Dallas, TX 75202

James G. Pachulski
Bell Atlantic
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Charles R. Morgan
William B. Barfield
Jim O. Llewellyn
M. Robert Sutherland
BellSouth Corporation
1155 Peachtree Street, NE
Suite 1700
Atlanta, GA 30309-3610

Michael K. Kellogg
Austin C. Schlick
Counsel for BellSouth Corporation
Kellogg, Huber, Hansen, Todd
& Evans, P.L.L.C.
1301 K Street, NW
Suite 100 West
Washington, DC 20005

Cindy Z. Schonhaut
ICG Communications, Inc.
161 Inverness Drive
Englewood, CO 80112

Jean L. Kiddoo
William L. Fishman
Counsel for RCN Telecom Services, Inc.
& Cleartel Communications, Inc.
Swidler & Berlin Chartered
3000 K Street, NW
Suite 300
Washington, DC 20007

Andrew D. Lipman
Russell M. Blau
Counsel for WorldCom
Swidler & Berlin Chartered
3000 K Street, NW
Suite 300
Washington, DC 20007

Albert H. Kramer
Robert F. Aldrich
Valerie M. Furman
Christopher T. McGowan
Counsel for ICG Communications, Inc.
Dickstein, Shapiro Morin & Oshinsky LLP
2101 L Street, NW
Washington, DC 20037-1526

Maribeth D. Snapp
Office of General Counsel
Oklahoma Corporation Commission
P. O. Box 25000-2000
Oklahoma City, OK 73152-2000

David J. Newburger
Counsel for Campagin Telecommunications
Access
Newburger & Vossmeyer
One Metropolitian Square
Suite 2400
St. Louis, MO 63102

Rachel J. Rothstein
Vice President Regulatory and Government
Affairs
Cable & Wireless, Inc.
8219 Leesburg Pike Road
Vienna, VA 22182

Russell M. Blau
Eric J. Branfman
Counsel for KMC Communications, Inc.
Swidler & Berlin Chartered
3000 K Street, NW
Suite 300
Washington, DC 20007

Catherine R. Sloan
Richard L. Fruchterman, III
Richard S. Whitt
WorldCom
1120 Connecticut Avenue, NW
Washington, DC 20036-3902

Christopher J. White
Deputy Assistant Ratepayer Advocate
31 Clinton Street
Eleventh Floor
Newark, NJ 07101

Ernest G. Johnson
Public Utility Division
Oklahoma Corporation Commission
P. O. Box 25000-2000
Oklahoma City, OK 73152-2000

James S. Blaszak
AdHoc Telecommunications Users
Committee
Levine Blaszak Block & Boothby LLP
2001 L Street, NW
Suite 900
Washington, DC 20036

Gene W. Lafitte
Staff Counsel
Consumer Advocate Division of the
Public Service Commission of WV
700 Union Building
Charleston, WV 25301

Danny E. Adams
Peter A. Batacan
Counsel for Cable Wireless, Inc.
Kelley Drye & Warren LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036

Martha S. Hogerty
Office of the General Counsel
P. O. Box 7800
Jefferson City, MO 65102

Irwin A. Popowsky
Office of the Consumer Advocate
1424 Strawberry Square
Harrisburg, PA 17120

Stephen Ward
Public Advocate
State House Station 112
Augusta, ME 04333

Robert Piller
Public Utility Law Project of New York
90 State Street
Suite 601
Albany, NY 12207-1715

Nancy Vaughan Coombs
Division of Consumer Advocacy
Department of Consumer Affairs
2801 Devine Street, Second Floor
P. O. Box 5757
Columbia, SC 29250

Phillip F. McClelland
Assistant Consumer Advocate
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Charles C. Hunter
Catherine M. Hannan
Telecommunciations Resellers Association
Hunter Communications Law Group
1620 I Street, NW
Suite 702
Washington, DC 20006

James Bradford Ramsey
Assistant General Counsel
NARUC
1100 Pennsylvania Avenue, NW
Suite 603
Washington, DC 20044-0684

James Maret
Office of the Consumer Advocate
Lucas State Office Building
Fourth Floor
Des Moines, IA 50319

Regina Costa
Toward Utility Rate Normalization
711 Van Ness Avenue
Suite 350
San Francisco, CA 94102

Robert Tongren
Ohio Consumers' Counsel
77 South High Street
Fifteenth Floor
Columbus, OH 43266-0550

Michael Travieso
Office of People's Counsel
6 St. Paul Street
Suite 21202
Baltimore, MD 21202

Suzi Ray McClellan
Office of Public Utility Counsel
P. O. Box 12397
Austin, TX 78711-2397

Geneive Morelli
The Competitive Telecommunications Association
1900 M Street, NW
Suite 800
Washington, DC 20036

Donald W. Downes
Glenn Arthur
Jack R. Goldberg
John W. Betkoski, III
Linda Kelly Arnold
Connecticut Department of Public Utility Control
Ten Franklin Square
New Britain, CT 06051

***Hand Delivered**

Lonzena Rogers